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10 **IN THE SUPREME COURT**
11 **STATE OF ARIZONA**
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PETITION TO AMEND ARIZONA
RULES OF FAMILY LAW
PROCEDURE RULE 4

Supreme Court No. _____

**Petition to Amend Arizona
Rules of Family Law Procedure
Rule 4**

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar of Arizona hereby petitions this Court to amend Rule 4 of the Arizona Rules of Family Law Procedure.

On September 2, 2010, Rule 6 of the Arizona Rules of Civil Procedure was amended. This petition proposes the same modifications to the equivalent rule of the Arizona Rules of Family Law Procedure. The proposed amendments are set forth in Appendix A. The proposed amendments would provide consistency between the newly amended Rule 6 of the Arizona Rules of Civil Procedure and Rule 4 of the Arizona Rules of Family Law Procedure. The comparable changes to Rule 6 of the Arizona Rules of Civil Procedure were approved by the Court in R-09-0030, with an effective date of January 1, 2011.

1 RESPECTFULLY SUBMITTED this 5th day of January, 2011.

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4 John A. Furlong
5 General Counsel

6 Electronic copy filed with the
7 Clerk of the Supreme Court of
8 Arizona this 5th day of January, 2011.

9 By: Kathleen A. Lundgren
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APPENDIX A

Proposed Rule Changes

(Petitioner's proposed changes shown with additions identified by underscoring and deletions identified by "~~strike-through~~").

Arizona Rules of Family Law Procedure

Rule 4. Time

A. Computation. In computing any period of time ~~prescribed~~ specified or allowed by these rules, by any local rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. When the period of time ~~prescribed~~ specified or allowed, exclusive of any additional time allowed under paragraph D, is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When that period of time is eleven (11) days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

B. - C. [No change in text.]

D. Additional Time after Service by Mail under Rule 43(C)(2)(c) or (d).

Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by a method authorized by Rule 43(C)(2)(c) or (d), five (5) calendar days are ~~shall be~~ added after ~~to~~ the prescribed period would otherwise expire under Rule 4(A). This rule has no application to the distribution of notice of entry of judgment required by Rule 81(D).

COMMITTEE COMMENT

This rule is based on Rule 6, *Arizona Rules of Civil Procedure*.

2006-COURT COMMENT TO 2007 AMENDMENT [~~Amended 2007~~]

Rule 4(D) was amended (i) to transfer and slightly modify the computation of time provision for electronic service and delivery in Rule 124(g) of the Rules of the Supreme Court of Arizona to Rule 4(D); (ii) to adopt a similar rule for service made under the other methods authorized under amended Rule 43(C)(2)(d) and (e); and (iii) to clarify an ambiguity in the rule relating to Rule 81(D).

As amended, the five-day "mailing rule" applies to service authorized by

Proposed Rule Changes

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Rule 43(C)(2)(c), (d) [deleted by amendment effective January 1, 2008] or (e) [relettered as (d) by amendment effective January 1, 2008]. Rule 4(D)'s reference to the "mailing" of a notice of entry of judgment under Rule 81(D) was changed to "distribution" to conform with Rule 81(D), which allows a notice of entry of judgment to be "distributed" by the clerk by mail, electronic mail or delivery to an attorney drop-box.

Previously, Rule 124(g) provided a document that was served electronically after 5:00 p.m. was to be treated as if served or delivered the following day. Rather than have a time computation rule that applies only to electronic service, this provision was not incorporated into the amendments to Rule 4(D).

COMMENT TO 2012 AMENDMENT

Rule 4(D) is amended to remove any doubt as to the method for extending the time to respond after service by mail or other means, including electronic means, if consented to in writing by the recipient or ordered by the court. Five days are added after the prescribed period otherwise expires under Rule 4(A). Intermediate Saturdays, Sundays, and legal holidays are included in counting these added five days. If the fifth day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday. The effect of invoking the day when the prescribed period would otherwise expire under Rule 4(A) can be illustrated by assuming that the thirtieth day of a thirty-day period is a Saturday. Under Rule 4(A) the period expires on the next day that is not a Sunday or legal holiday. If the following Monday is a legal holiday, under Rule 4(A) the period expires on Tuesday. Five calendar days are then added—Wednesday, Thursday, Friday, Saturday and Sunday. As the fifth and final day falls on a Sunday, by operation of Rule 4(A), the fifth and final day to act is the following Monday. If Monday is a legal holiday, the next day that is not a legal holiday is the fifth and final day to act. If the period prescribed expires on a Wednesday, the five added calendar days are Thursday, Friday, Saturday, Sunday, and Monday, which is the fifth and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the fifth and final day to act.

Application of Rule 4(D) to a period that is less than eleven days can be illustrated by a paper that is served by mailing on a Wednesday. If ten days are allowed to respond, intermediate Saturdays, Sundays, and legal holidays are excluded in determining when the period expires under Rule 4(A). If there is no legal holiday, the period expires on the Wednesday two weeks after the paper was mailed. The five added Rule 4(D) days are Thursday, Friday, Saturday,

Proposed Rule Changes

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Sunday, and Monday, which is the fifth and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.